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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE GENERIC
INVESTIGATION INTO U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH CERTAIN
WHOLESALE PRICING
REQUIREMENTS FOR UNBUNDLED
NETWORK ELEMENTS AND
RESALE DISCOUNTS.

DOCKET NO. T-00000A-00-0194

**QWEST CORPORATION'S RESPONSE
TO AT&T'S MOTION TO STRIKE
QWEST'S TRANSPORT MODULE
AND LOOP MODULE**

Qwest Corporation ("Qwest") hereby responds to the Motion to Strike Qwest's Transport Module and Loop Module filed by AT&T Communications of the Mountain States, Inc. ("AT&T") on July 12, 2001. AT&T's motion is simply designed to distract the Arizona Corporation Commission ("Commission") from AT&T's own failure to provide key data, without which its Hatfield model has no credibility. AT&T has moved to strike Qwest's evidence on the grounds that data requests have not been answered or documents provided; however, AT&T has neither sent a letter demanding that such data be produced nor engaged in a discussion with Qwest counsel concerning these "outstanding" responses. In fact, AT&T has never even filed a motion to compel the production of this discovery. Arizona law dictates that absent these necessary prerequisites (i.e., personal consultation, a good faith effort at resolution), the Commission cannot grant a motion to strike.

AT&T's contentions also lack substance. Originally, Qwest withheld approximately fifty-eight (58) vendor contracts because these contracts required that Qwest seek permission prior to releasing them to any third party. Qwest did, however, promptly attempt to contact its vendors to

1 obtain vendor permission. After sending out numerous letters requesting vendor authorization,
2 Qwest was able to provide over 90 % of these contracts to the interveners. The contracts provide
3 extensive support for the data contained in both Loop Mod and Transport. To date, only two
4 contracts from one vendor have not been produced because Qwest did not receive vendor
5 permission. This contract relates primarily to the collocation model, and not the models AT&T
6 seeks to strike. As the attached exhibits indicate, Qwest answered the data requests seeking
7 references for the Loop Mod and the Transport Module in a timely fashion. Qwest has now
8 obtained permission to release all of the Transport contracts and would have supplemented this
9 request or responded to a telephone call for supplementation, obviating any need for a motion to
10 compel. AT&T's motion is, therefore, completely unjustified.

11 **Responses To Loop Mod Requests**

12 AT&T served a series of data requests seeking information supporting Richard.
13 Buckley's testimony and the "latest contracts" regarding loop placement, drops and fiber optics.
14 See AT&T Data Requests, Nos. 75-90. In response, Qwest produced nine (9) contracts regarding
15 these topics. When asked to produce a specific reference to data contained in the contracts on a
16 5-day turnaround, Qwest provided several responses indicating where the data came from.

17 For example, Qwest's response to AT&T Data Request No. 7-148 is as follows:
18 "Documents with the header code GC/M 0200 and GC/M 0898 contain data for trenching and
19 buried service wire work." In response to yet another request (AT&T Data Request No. 203),
20 Qwest noted that there were other contracts used to create Loop Mod that had not been produced.
21 Instead, Qwest produced its latest contracts, which it believed were the ones requested by AT&T
22 and at issue in this docket. Some of these contracts were with the very same vendors covered by
23 the latest contracts and others were with vendors for whom there were no current contracts.
24 AT&T never explicitly requested the old contracts and again never moved to compel their
25 production. If Qwest can still find the contracts, they will be produced if AT&T wants them.

26

1 Regardless, Qwest has already produced nine (9) contracts, which relate to and support the data
2 in Loop mod. AT&T has had every opportunity to review and analyze those contracts.

3 AT&T may have trouble correlating the vendor contracts with the data in Loop Mod
4 because of the calculations performed in the program. Loop Mod does not simply insert data
5 from a contract. It averages data from several contracts and various density zones to create each
6 figure. The contract information for each individual item number is slotted into any of the zones
7 in which the contractor operates. The zone cost for each item is developed by taking a straight
8 average of all the prices for that item in that zone. A straight average is used because any of the
9 contractors within the zone is eligible to perform that work. The resulting average zone prices
10 for each item are then weighted together based on the number of lines in each zone. Thus, an
11 individual price from a contract has undergone two weighting processes prior to that item being
12 input to the Loop Mod program. These methodologies were disclosed in response to AT&T
13 Data Requests, Nos. 117 and 204.

14 **Transport Module Contracts**

15 AT&T served Data Requests, Nos. 90, 91 and 92, requesting contracts supporting the
16 Transport Module. Qwest has now produced six (6) contracts that support all the elements in the
17 module. Only one contract was not produced until July 11, 2001, because the vendor would not
18 authorize its release. Qwest is close to obtaining release of the final transport contract. Most of
19 the contracts were previously produced in Colorado, and therefore AT&T had ample time to
20 review them. On June 26, 2001, AT&T served Data Request No. 153 seeking an enumeration of
21 the contracts relating to the Transport Camp (sic) Module. Because the vendors for the two
22 largest contracts in this module had not yet given permission for release of the contract, Qwest
23 answered that vendor permission had not yet been given. Again, AT&T has never sought
24 production of these contracts via letter or motion. Counsel for AT&T requested an oral summary
25 and was advised on July 6, 2001, that the principle contracts were still under vendor hold, but
26 would most likely be released in a day or two. One such contract was released and provided

1 three (3) days later. The other will be provided shortly. Qwest was in the process of
2 supplementing its response to AT&T Data Request No. 153 when AT&T's motion was served.

3 **Failure to Produce all Contracts**

4 AT&T's final argument that Qwest has been dishonest in its responses cannot withstand
5 scrutiny in light of Qwest's response to AT&T Data Request No. 212. In this duplicative
6 request, AT&T asked Qwest to affirm that it had produced all requested contracts. Qwest
7 responded that it had done so, except for the contracts where vendors still asserted their
8 proprietary rights. Qwest has not intentionally withheld any contract other than the ones where
9 vendors have refused permission. If AT&T believed that Qwest should have produced the old
10 placement contracts, it should have requested them. The existing data requests do not seek these
11 contracts and even when AT&T received the response identifying their existence (AT&T Data
12 Request No. 203), AT&T remained silent. Through its discovery responses and in conversations
13 between counsel, Qwest has affirmed that it produced all requested contracts except for those
14 with proprietary objections. Even in its motion, AT&T does not plainly request the old
15 placement contracts. Nonetheless, Qwest remains willing to attempt to locate them if AT&T
16 indicates to do so.

17 **Conclusion**

18 AT&T's motion to strike is a procedural device intended to distract the Commission from
19 granting Qwest's motion on the Hatfield Model. Despite AT&T's contention that Qwest has
20 withheld "key data" relating to inputs to the Loop and Transport models and only produced such
21 "data" on the eve of the hearing, these very inputs can be and have been changed by AT&T
22 witnesses using data it obtained from other sources, including a panel of experts who created the
23 input data for the Hatfield model.

24 AT&T, on the other hand, has withheld data that relates to the structure of the Hatfield
25 Model itself. Without reviewing the TNS data, Qwest cannot determine whether the Hatfield
26 model properly located the homes and business premises in any cluster served by Qwest. Thus it

1 is impossible to test the validity of the amount of cable and the rest of the design for each
2 population cluster. Based on similar efforts in the Minnesota cost docket, it is likely that the
3 requested data will show errors in the placement of Qwest customers and thus undermine the
4 validity of the entire model. In contrast any problems resulting from any alleged late or absent
5 Qwest contract data can be solved by simply changing model inputs when the Commission
6 demands and reviews the data.

7 RESPECTFULLY SUBMITTED this 13th day of July, 2001.

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4 Docket Control
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CERTIFICATE OF SERVICE

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